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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

Martha Galaviz-Zamora, Martha Mara Galaviz, Alma Gabriella Dominguez Torres, Concepcion Contreras, Delfino Vazquez, Miguel Angel Ramirez, Hermelinda Ramirez (As next Friend of Edwin Adrian Peraza), Fernando Torres, Oscar Vasquez Sr. (As next Friend of Oscar Vasquez Jr.), Eladio Ramirez (for Himself and as next Friend of Luis Mario Ramirez), Juan Ramirez, Leopoldo Tenorio Jimenez, Hermelinda Tenorio, Israel Tenorio, Esperanza Matta, Maura Chavez, Julian Clara Sr. (for himself and as next friend of Julian Clara Jr. and Maria Clara), Veronica Clara, Leticia Infante, Individually and on Behalf of All Those Similarly Situated,

PLAINTIFFS,

CASE NO. 1:04CV0661

v.

HON.

Brady Farms, Inc., a Michigan Corporation,
Robert L. Brady, an individual,
Jose Arturo Chavez, an individual,
Santiago Botello-Perez, an individual,
Manuel Botello, an individual, Vicente Botello, an individual, Esteban Garcia, an individual, Jose Trujillo, an individual, Mauro Lopez, an individual, and Ismael Perez, an individual, Valentine Perez, an individual, Adrian Zavala, an individual, and Jose Casiano, an individual.

CLASS ACTION COMPLAINT & JURY DEMAND

DEFENDANTS.

_____________________________________/

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_____________________________________/

The following is a case pending before this court that may involve the same or similar violations arising out of the same transactions or occurrences complained of in this Complaint:

Donaciana Aquino Bautista, et al., v. Twin Lakes Farms, Inc. et al.,
Case No. 1: 04-CV-0483
Hon. Richard Alan Enslen

The following are cases resolved alleging the same or similar violations complained of in this complaint:

Juana Bautista Feliciano, et al., v. Brady Farms, Inc.
Case No. 1:04-CV-0158
Hon. Richard Alan Enslen

Maria Mendez, et al., v. Robert Brady, et al.,
Case No. G-82- 0391
Hon. Douglas W. Hillman

PRELIMINARY STATEMENT

This is a civil action brought on behalf of the named Plaintiffs, migrant farm workers, and all similarly situated former and current employees (collectively referred to as "Plaintiffs") of the Defendants in and around Ottawa County, Michigan, from 1999 to 2004. Plaintiffs complain that the Defendants engaged in a pattern or practice of unlawful conduct which resulted in the violation of their rights under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C.§1802, and the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 et seq., and violated the terms of two permanent injunctions issued by this Court in 1975 and 1985 enjoining the Defendants from violating the FLSA and AWPA. Plaintiffs seek money damages, declaratory relief and injunctive relief to redress these violations, as well costs of prosecuting the action and reasonable attorney fees.

JURISDICTION

1. Jurisdiction is conferred upon this Court by 29 U.S.C. §1854(a), this action arising under the AWPA; by 29 U.S.C. §216(b), this action arising under the FLSA; by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce; and by 28 U.S.C. §1331, this action involving questions of federal law.

2. This Court is empowered to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 - 2202.

VENUE

3. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b) and (c) and 29 U.S.C. §1854(a).

PARTIES

4. Plaintiffs are residents of various states, but resided in State of Michigan during all relevant times.

5. Defendant Brady Farms, Inc. (hereinafter "Brady Farms") is a Michigan corporation in good standing whose principal place of business is located in Ottawa County, in the state of Michigan. (Exhibit 1)

6. Defendant Brady Farms owns and/or operates blueberry farm(s) in and around Ottawa County, in the state of Michigan.

7. Defendant Robert L. Brady (hereinafter "Brady") is the owner and/or president of Brady Farms. (Exhibit 2)

8. Upon information and belief, Defendant Jose Arturo Chavez (hereinafter "Chavez") is a supervisor/manager employed with Brady Farms.

9. Upon information and belief, Defendant Santiago Botello-Perez (hereinafter "Santiago") is, or was during all relevant times, a supervisor/manager employed by Defendant Brady Farms. (Exhibit 3)

10. Upon information and belief, Defendant Esteban Garcia (hereinafter "Garcia") is a Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

11. Upon information and belief, Defendant Manuel (aka "Mane") Botello (hereinafter "Manuel") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

12. Upon information and belief, Defendant Vicente Botello (aka "Ventrua") (hereinafter "Vicente") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

13. Upon information and belief, Defendant Jose Trujillo (hereinafter "Trujillo") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

14. Upon information and belief, Defendant Mauro Lopez (hereinafter "Lopez") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

15. Upon information and belief, Defendant Ismael Perez (hereinafter "Perez") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR

§500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

16. Upon information and belief, Defendant Valentine Perez (hereinafter "Valentine") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

17. Upon information and belief, Defendant Adrian Zavala (hereinafter "Zavala") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

18. Upon information and belief, Defendant Jose Casiano (hereinafter "Casiano") is an unlicensed Farm Labor Contractor, as defined in 29 U.S.C. §1802(7) & 29 CFR §500.20(j), hired by Defendant Brady Farms, through its agent(s), to provide hand harvesters/general laborers.

FACTS

Recruitment

19. During the period between January 1999 and September 2004, Defendant Brady Farms engaged the services of various farm labor contractors to provide hand harvesters/general laborers for work in its blueberry fields.

20. During all relevant times, Defendant Brady Farms, through its agents, Defendants Chavez, Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala,

Casiano and various other farm labor contractors, recruited the Plaintiffs to work in its blueberry fields.

21. Upon information and belief, Defendants recruited Plaintiffs:

a. through word of mouth;

b. by posting flyers in various stores, restaurants and/or laundromats;

c. through use of the services provided by state agencies such as the Michigan Department of Labor and Economic Growth.

d. through radio and newspaper advertisements.

22. Upon information and belief, the Defendants recruited workers in Michigan, Florida, Georgia, North Carolina, Tennessee, Texas, Mexico and Central America.

Employment & Working Conditions

23. Upon information and belief, Defendant Brady Farms, through its agent(s), offered Plaintiffs employment picking blueberries in its fields.

24. Upon information and belief, Defendant Brady Farms, through its agent(s), provided each worker with a poker chip ("chip"), ticket or other marker representing a certain number of buckets to be redeemed at the end of the week for compensation. (Exhibit 4)

25. Upon information and belief, each chip, ticket or marker also represented the value of each bucket.

26. Upon information and belief Defendants did not require the Plaintiffs to fill out any of the federally mandated paperwork such as the I-9 or W-4.

27. Upon information and belief, Defendants did not keep any records pertaining to the Plaintiffs as required by law.

28. Upon information and belief, Defendant Brady Farms, through its agent(s), required Plaintiffs to elect one person who would be representative of each family or group in listing the amounts of buckets picked.

29. Upon information and belief, Defendant Brady Farms, through its agent(s), required only one representative per family or group for its own convenience in recording the buckets picked.

30. Upon information and belief, the Defendant Brady Farms, through its agent(s), assigned that representative worker a number to be used to list the amount of buckets picked by each group represented by that particular worker.

31. Upon information and belief, each representative worker represented a group of workers ranging from four to fifteen.

32. Upon information and belief, this list containing the employee number and the buckets picked per group were written down in a notepad or spiral notebook kept by Defendants Chavez, Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other farm labor contractors.

33. Defendant Brady Farms, through its agent(s), paid Plaintiffs at a piece rate for the work performed.

34. Upon information and belief, the Defendants did not keep track of all hours worked by the Plaintiffs.

35. The Plaintiffs were paid in cash by Defendant Brady Farms, through its agent(s) Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and or other farm labor contractors.

36. The Plaintiffs were paid once a week, usually on Saturdays.

37. Upon information and belief, the piece rate brought the Plaintiffs' pay below the federal minimum wage at various times throughout their employment.

38. Each Plaintiff was not paid for all hours worked.

39. Each Plaintiff was not paid the minimum wage for all hours worked.

40. Plaintiffs traveled from their home states to work for Defendant Brady Farms.

41. Upon information and belief, Plaintiffs also traveled with Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Zavala, Casiano and other farm labor contractors from other states to work in Michigan with Defendant Brady Farms.

42. Upon information and belief, the Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other farm labor contractors each had a crew ranging between 50 - 200 workers.

43. Upon information and belief, Defendant Brady Farms, through its agent Defendant Chavez and Brady, directed the Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other farm labor contractors and their respective crews to fields that were deemed ready for hand harvesting.

44. Upon information and belief, Defendant Chavez would communicate instructions and other information to Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other farm labor contractors through the use of a cell phone, two way radio, or in person.

45. Upon information and belief, Defendant Brady Farms, through its agent(s) Defendants Chavez and Brady, set the prices to be paid in piece rate throughout Plaintiffs' employment.

46. Upon information and belief, Defendant Brady Farms, through its agent(s), controlled or supervised the work performed by Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other farm labor contractors.

47. Upon information and belief, the Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other farm labor contractors employed assistants who were delegated various tasks including but not limited to:

a. Assigning the rows for picking to Plaintiffs;

b. Recruitment of workers;

c. Transporting workers to and from the fields;

d. Recording the number of markers received per worker;

e. Receiving buckets from Plaintiffs and emptying their contents into plastic containers for transport to Brady Farms, Inc.

48. Upon information and belief, those assistants include individuals named "Adam" or "Adan" or "Uriel".

49. Upon information and belief, Defendants are joint employers as defined under 29 CFR §500.20(h)(5).

50. Upon information and belief, Defendants failed to provide bathroom facilities to Plaintiffs while they worked in the Defendant Brady Farms' fields.

51. Upon information and belief, Defendants failed to provide potable water to Plaintiffs while working in Defendant Brady Farms' fields.

52. Upon information and belief, Defendants did not provide drinking cups for each worker.

53. Upon information and belief, Defendant Brady Farms, through its agent(s), allowed only certain individuals to sell food and beverages, including alcoholic beverages, to the Plaintiffs during work hours.

54. Upon information and belief, no other individual was authorized or allowed to sell any goods to the Plaintiffs during work hours.

55. Upon information and belief, Defendant Brady Farms, through its agent(s), allowed the Plaintiffs to pay for the goods with the chips or other markers as described in paragraph #24.

56. Upon information and belief, Defendant Brady Farms, through its agent(s), deducted the amounts owing to the vendor of the goods as described in paragraph #55 from the Plaintiffs' pay.

57. Upon information and belief, Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other crewleaders, provided housing for various Plaintiffs.

58. Upon information and belief, the housing consisted of apartments or houses owned and/or controlled by Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other crewleaders.

59. Upon information and belief, Defendant Brady Farms, through its agent(s), deducted amounts owing to the farm labor contractors for housing, loans or other outstanding debts from the Plaintiffs' pay.

60. Upon information and belief, the deductions made by Defendants from Plaintiffs pay brought their rate of pay below the federally mandated minimum wage.

61. Upon information and belief, the Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other crewleaders, transported various Plaintiffs to Defendant Brady Farms fields.

62. Upon information and belief, the Defendants failed to post notices as required under the FLSA and AWPA.

63. Upon information and belief, Defendant Brady manages and directs the farming operations of Defendant Brady Farms.

64. On October 6, 1975, Defendant Brady Farms entered into a consent judgment with the Secretary of Labor, and filed with this Court, which permanently enjoined it from violating the Fair Labor Standards Act. (Exhibit 5)

65. On June 6, 1985, the Hon. Douglas W. Hillman entered a Judgment against Defendant Brady Farms which permanently enjoined it from violations of the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act (formerly contained in the Fair Labor Contractor Registration Act at 7 USC §2041 et seq.). (Exhibit 6)

66. Upon information and belief, Defendants Brady Farms, Brady, Chavez and Santiago knew or were made aware of the violations herein complained of because the Michigan

Migrant Legal Assistance Project, Inc. brought them to their attention in 2000 and as early as January of this year. (Exhibits 3, 7 & 8)

67. Upon information and belief, Defendant Brady Farms, Brady, Chavez did not affirmatively act to prevent or redress the violations herein complained of.

CLASS ALLEGATIONS

68. All claims set forth in Count I are brought by the Plaintiffs on behalf of themselves and all other similarly situated persons pursuant to Rules 23(b)(2) and (b)(3)of the Federal Rules of Civil Procedure.

69. All claims set forth in Count II of this action are brought pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216 (b). Named Plaintiffs bring this count on their own behalf and on behalf of all other current or former employees who (1) worked or are working for Defendants as hand harvesters at any time on or after the date six years prior to the filing of this lawsuit, and (2) were or are subject to the violations of the FLSA described in Count II. Named Plaintiffs do not bring Count II on behalf of any executive, administrative, and professional employees exempt from coverage under the FLSA.

70. With respect to Count II, a collective action under the FLSA is appropriate because the employees just described are "similarly situated" to the named Plaintiffs. 29 U.S.C. § 216(b); Hoffman-La Roche, Inc. v. Sperling, 493 U.S. 165, 170 (1989).

71. The Plaintiffs seek to represent a class consisting of all migrant and seasonal agricultural workers, as defined by the AWPA, who were employed harvesting blueberries for the Defendants during the period between 1999 and 2004.

72. The class of employees on behalf of whom Plaintiffs bring this collective action are similarly situated because they have been or are employed in the same or similar positions as the individually named Plaintiffs, were or are subject to the same or similar unlawful practices, policy or plan as the individually named Plaintiffs, and their claims are based upon the same legal theory as those of the named Plaintiffs.

73. The class is believed to include over three thousand (3,000) individuals. The class is comprised of indigent migrant workers who are not fluent in the English language and who maintain their residences at various locations throughout the United States, Mexico, and Central America. The relatively small size of the individual claims, the indigence and migratory nature of the class members makes the maintenance of separate actions by each class member economically infeasible. Joinder of all class members is impracticable.

74. There are questions of fact common to the class. The common questions of fact include, but are not limited to:

a. whether the Defendants engaged in a pattern or practice of failing to keep and maintain accurate payroll records as required by the FLSA and the AWPA;

b. whether the Defendants engaged in a pattern or practice of failing to provide wage statements to the Plaintiffs as required under the FLSA and AWPA;

c. whether the Defendants engaged in a pattern or practice of failing to pay Plaintiffs all wages when due in accordance with the FLSA and the AWPA;

d. whether the Defendants engaged in a pattern or practice of failing to pay the Plaintiffs the federally mandated minimum wage for all hours worked as required under the FLSA;

e. whether the conduct of the Defendants was willful or intentional;

f. whether Plaintiffs and members of the proposed class are entitled to lost wages, liquidated damages and the other requested relief.

75. There are questions of law common to the class. The common legal questions include whether the Defendants' actions violated the AWPA and/or the FLSA and whether any such violations were willful or intentional within the meaning of that statutes.

76. The claims of the named Plaintiffs are typical of those of the class, and these typical, common claims predominate over any questions affecting only individual class members. The named Plaintiffs have the same interests as do the other members of the class and will vigorously prosecute these interests on behalf of the class.

77. The Defendants have acted or acted or refused to act or failed to perform a legal duty, on grounds generally applicable to all class members which makes final relief of an injunctive nature or a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, appropriate.

78. The Plaintiffs' counsel has handled numerous class actions in the federal courts, including collective/class actions under the AWPA and the FLSA. The Plaintiffs' counsel is prepared to advance litigation costs necessary to vigorously litigate the action.

79. A class action under Rule 23(b)(3) is superior to other available methods of adjudicating the controversy concerning the Defendants' alleged violations of the AWPA and the FLSA, because, inter alia:

a. The common issues of law and fact, as well as the relatively small size of the individual class members' claims, substantially diminish the interest of members of the class in individually controlling the prosecution of separate actions;

b. Many members of the class are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;

c. There has been no litigation already commenced against the Defendants by the class members to determine the questions presented;

d. It is desirable that the claims be heard in this forum since the Defendants are subject to the court's jurisdiction, and the actions giving rise to the claim occurred in this district;

e. A class action can be managed without undue difficulty because the Defendants have regularly committed the violations complained of herein, and are required to maintain detailed records concerning each class member.

Count I.

Violation of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) 29 USC §1801 et seq.

80. Plaintiffs incorporate paragraphs 1-79 above.

81. At all times relevant to this action, Plaintiffs were migrant and/or seasonal agricultural workers within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act (hereinafter "AWPA"), 29 U.S.C. §1802(8)(a) & 1802(10).

82. At all times relevant to this action, Defendants Brady Farms, Brady, Chavez and Santiago were agricultural employers within the meaning of the AWPA, 29 U.S.C. §1802(2).

83. At all times relevant to this action, Plaintiffs were employed by the Defendants within the meaning of the AWPA, 29 U.S.C. §1802(5).

84. At all times relevant to this action, Defendants Garcia, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and others were Farm Labor Contractors within the meaning of the AWPA, 29 U.S.C. §1802(7).

85. Defendants Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other crewleaders owned or controlled housing within the meaning of 29 C.F.R. §500.130(b).

86. Defendants willfully violated AWPA by, *inter alia*:

a. Failing to disclose the terms of employment as required by 29 U.S.C. §1821(a) & §1831(a) at the time Plaintiffs were recruited, including:

i. The specific place of employment;

ii. Rate of pay;

iii. Crops and type of work to be performed;

iv. Period of employment;

v. Housing; and

vi. The existence of workers compensation or unemployment insurance.

b. Failing to make the required disclosures in writing and in the native language of the Plaintiffs as required by 29 U.S.C. §1821(g) and §1831(f).

c. Violating, without justification, the terms of the working arrangement made by the Defendants with the Plaintiffs, including those aspects of the working relationship that are required by law, as prohibited under 29 U.S.C. §1822(c) & §1832(c). Elizondo v. Podgorniak, 100 F.Supp.2d 459, 463 (E.D. Mich. 2000).

d. Failure to compensate Plaintiffs for all hours worked. AWPA, 29 U.S.C. §1822(a) and §1832(a).

e. Failing to pay Plaintiffs wages owed when due. AWPA, 29 U.S.C. §1822(a) and §1832(a).

f. Failing to make, keep, and preserve payroll records for each Plaintiff for each pay period as required by the AWPA 29 U.S.C. §1821(d)(1) and §1831(c)(1) which shows the following:

i. The basis on which the wages are paid.

ii. Number of piece work units earned.

iii. Number of hours worked.

iv. Total pay period earnings.

v. Specific sums withheld from wages and the purpose of each sum withheld.

vi. The net pay.

vii. The worker's permanent address.

viii. The worker's social security number.

g. Failing to provide each Plaintiff with an itemized pay statement showing all of the information required to be maintained in the payroll records as required under the AWPA 29 U.S.C. §1821(d)(2) and §1831(c)(2) and the following:

   i. Employer's name.

   ii. Employers address.

   iii. Employers IRS identification number.

h. Failing to post in a conspicuous place at Plaintiffs' place of employment, a poster setting forth the rights and protections afforded migrant agricultural workers under AWPA, 29 U.S.C. §1821(b) and §1831(b).

i. Failing to make available for inspection the written terms and conditions of employment at the jobsite. 29 U.S.C. §1843.

j. Knowingly giving false or misleading information to Plaintiffs regarding the working and housing conditions. AWPA 29 U.S.C. §1821(f), §1831(f).

k. Engaging in Farm Labor Contracting activities without being properly registered and authorized to engage in such activities as required under the AWPA, 29 U.S.C. §1811.

l. Failing to determine that the farm labor contractors possess valid registration certificates. 29 U.S.C. §1842.

m. Failing to carry his/her Farm Labor Contracting Certificate as required under the AWPA, 29 U.S.C. §1811(c).

n. Hiring, employing, or using the services of unregistered employees or subcontractors to perform farm labor contracting services. 29 U.S.C. §1811(a)(2) & (b).

o. Requiring a worker to purchase goods solely from the Defendants or those associated with the Defendants. 29 U.S.C. §1822(b) and §1832(b).

p. Failure to ensure that the housing meets all substantive Federal and state health and safety standards. AWPA 29 U.S.C. §1823(b)(1); 29 C.F.R. §500.130(a).

q. Failing to have the appropriate federal, state or local agency certify that the housing complies with federal and state health and safety standards before allowing any workers to occupy the housing. 29 U.S.C. §1823(b)(1).

r. Failing to post a certificate of compliance with the federal and state health and safety standards. 29 U.S.C. §1823(b)(1).

s. Failing to ensure that the vehicles used to transport workers complies with the federal safety standards set forth at 29 C.F.R. Subpart D, 29 C.F.R. §§500.100 et seq., and with state vehicle safety standards. 29 U.S.C. §1841(b)(1)(A).

t. Failing to ensure that each driver has a valid driver's license for the type of vehicle being used to transport workers. 29 U.S.C. §1841(b)(1)(B).

u. Failing to have the proper insurance or liability bond as required by the AWPA, 29 U.S.C. §1841(b)(1)(C).

87. Where the court finds an intentional violation of the provisions of this Act, the AWPA provides for damages equal to actual damages or for statutory damages of $500.00 per Plaintiff per violation. 29 U.S.C. §1854(c)(1).

88. As a result of Defendants' violations of the AWPA, each Plaintiff suffered statutory damages of $10,500.00 and/or actual damages in an amount yet to be determined.

89. The acts of the Defendants and the nature of the hiring of migrant labor makes it impossible to seek damages every time a violation occurs and therefore injunctive relief is appropriate to prevent future violations of the AWPA.

Count II

Violation of the Federal Fair Labor Standards Act, 29 USC § 201 et. seq.

90. Plaintiffs incorporate paragraphs 1-89 above.

91. Pursuant to 29 U.S.C. § 216(b), the named Plaintiffs have consented in writing to be party plaintiffs in this FLSA action. Their written consents are attached to this complaint as Exhibit 9.

92. At all times relevant to this action, Defendants were Plaintiffs' "employer" within the meaning of the Federal Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 203(d).

93. At all times relevant to this action, Defendants "suffered or permitted" Plaintiffs to work and thus "employed" Plaintiffs within the meaning of FLSA, 29 U.S.C. §203(g).

94. The FLSA requires an employer to pay employees the federally mandated minimum wage of $5.15 per hour. 29 U.S.C. §206.

95. The Defendants violated the FLSA by failing to pay the Plaintiffs the minimum wage for all hours worked.

96. The violations of the FLSA as set out in paragraph 95 resulted in part from the Defendants' failure to supplement the piece-rate earnings of the Plaintiffs so as to raise their individual pay period wages to a rate equal to or exceeding the minimum wage.

97. The violations of the FLSA as set out in paragraph 95 resulted in part from the Defendants' unlawful withholdings and deductions from the wages of the Plaintiffs and others similarly situated.

98. The Plaintiffs are victims of a uniform and company wide compensation policy which operates to compensate them at a rate less than the federally mandated minimum wage. This uniform policy, in violation of the FLSA, has been and continues to be applied to all employees who have worked or are working as hand harvesters for the Defendant Brady Farms.

99. The Defendants failed to maintain accurate records of all hours worked by the Plaintiffs as required under 29 U.S.C. §516.2(a).

100. An employer subject to the FLSA is also required to "post and keep posted a notice explaining the Act . . . in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy." 29 C.F.R. §516.4

101. The Defendants failed to post or maintain such a notice as referred to in paragraph 100 of this complaint, during all relevant times.

102. Defendants failure to post or maintain a notice as required under the FLSA acts to toll the statute of limitations.

103. Defendants violations of the FLSA were willful and intentional.

104. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid minimum wages plus an additional equal amount in liquidated damages, costs, and reasonable attorney fees.

105. As a direct and proximate result of Defendants' violation, each Plaintiff is entitled to his or her unpaid minimum wage plus an additional equal amount in liquidated statutory damages along with costs and reasonable attorney fees.

COUNT III

Violation of Permanent Injunctions

106. Plaintiffs incorporate paragraphs 1-105 above.

107. Defendant Brady Farms was and has been permanently enjoined from violations of the FLSA and the AWPA since 1975 and 1985 respectively. (Exhibits 5 & 6)

108. Defendants Brady, Chavez, Garcia, Santiago, Manuel, Vicente, Trujillo, Lopez, Perez, Valentine, Zavala, Casiano and other crewleaders were aware or should have been aware of the injunctions enjoining Defendant Brady Farms from violation of the FLSA and AWPA.

109. Defendant Brady Farms has violated both the FLSA and the AWPA during the time the permanent injunctions were in effect.

110. As a result of Defendant Brady Farms' violation of the injunctions, the Plaintiffs have suffered actual, incidental and consequential damages.

111. This Court has the power to order the Defendants to compensate Plaintiffs for their actual, incidental and consequential damages and to coerce future compliance with the injunction.

WHEREFORE, Plaintiffs request the following relief:

1. Certifying this case as a class action in accordance with Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to the AWPA claims set forth in Count I;
2. Certifying this case as a class action in accordance with Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the AWPA claims set forth in Count I;
3. Certifying this case as a collective action in accordance with 29 U.S.C. §216(b) with respect to the FLSA claims set forth in Count II;
4. Declaring that the Defendants have intentionally violated the Migrant and Seasonal Agricultural Worker Protection Act, the Fair Labor Standards Act and their attendant regulations as set forth in Counts I & II;
5. Declaring that Defendant Brady Farms, through its agent(s), violated the terms of the permanent injunctions issued against it by this Court;
6. Granting Judgment in favor of Plaintiffs and other members of the class and against Defendants, jointly and severally, on the AWPA claims set forth in Count I, and awarding the Plaintiffs and other class members their actual damages or statutory damages, whichever is greater, for each of these violations of the Migrant and Seasonal Agricultural Worker Protection Act and its attendant regulations;
7. Granting judgment in favor of Plaintiffs and against Defendants, jointly and severally, on the Plaintiffs' Fair Labor Standards Act claim as set forth in Count II and awarding each of them the amount of his/her unpaid minimum wages, along with an equal amount as liquidated damages;

8. Granting judgment in favor of Plaintiffs and against Defendants, jointly and severally, on the Plaintiffs' claim set forth in Count II and awarding each of them monetary damages in the amount of their actual, incidental and consequential damages.

9. Permanently enjoining the Defendants from committing any further violations of the Migrant and Seasonal Agricultural Worker Protection Act and providing for a civil penalty or other monetary fine for any future violations of the AWPA;

10. Permanently enjoining the Defendants from committing any further violations of the Fair Labor Standards Act and providing for a civil penalty or other monetary fine for any future violations of the FLSA;

11. Order the Defendants to pay all costs associated with giving notice to the entire class;

12. Awarding Plaintiffs the costs of this action;

13. Awarding the Plaintiffs a reasonable attorney's fee with regard to their claims under the Fair Labor Standards Act;

14. Awarding the Plaintiffs a reasonable attorney's fee with respect to their claims under the wage payment provisions of the Migrant and Seasonal Agricultural Worker Protection Act that arise under the same core of facts as and are closely related to the claims made in Count II for violations of the Fair Labor Standards Act;

15. Awarding the Plaintiffs costs and reasonable attorney fees with respect to their claims as set forth in Count III;

16. Whatever additional relief the Court deems just and proper.

Respectfully submitted,

MICHIGAN MIGRANT LEGAL
ASSISTANCE PROJECT, INC.

By: ______________________
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Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial.

Dated: 9/30/04

By:____________________
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